

MEMORANDUM OF AGREEMENT
BETWEEN
THE BONNEVILLE POWER ADMINISTRATION
AND
THE DEPARTMENT OF THE ARMY

ARTICLE I - PURPOSE AND AUTHORITY

This Memorandum of Agreement ("MOA") is entered into by and between the Department of the Army ("DA") and the Bonneville Power Administration ("BPA") ("the parties") for the purpose of establishing a mutual framework governing the respective responsibilities of the parties regarding the development of capital generation additions, improvements, and replacements at U.S. Army Corps of Engineers ("USACE") hydroelectric projects or other projects operated and maintained in the Pacific Northwest Region. This MOA is entered into pursuant to Section 2406 of the National Energy Policy Act of 1992, Pub. L. 102-486, 16 U.S.C. 839d-1, ("the Act").

ARTICLE II - SCOPE

The DA is responsible for the planning, designing, constructing, rehabilitating, and operating and maintenance of twenty-one (21) hydroelectric projects in the Pacific Northwest Region. These hydroelectric projects are operated and maintained by USACE to meet multiple purposes of water resource development in the Pacific Northwest Region, including but not limited to flood control, navigation, electric power generation, fish and wildlife, water supply and water quality. The DA shall identify hydroelectric projects and other projects which it operates and maintains in the Pacific Northwest which the DA has determined, consistent with good engineering practice, DA policy and the multiple uses of water resource projects to be suitable for consideration under § 2406 of the Act. The BPA may then choose to fund the DA development (to include the planning, designing, and construction) of generation additions, improvements, and replacements at those projects.

Pursuant to this MOA, the DA agrees to consult with the BPA regarding the opportunities to develop generation additions, improvements and replacements under § 2406 of the Act to USACE hydroelectric projects and other projects which it operates and maintains in the Pacific Northwest Region and to afford to BPA the opportunity to review and comment on the DA's plans respecting the planning, designing, and constructing of generation additions, improvements, and replacements at USACE hydroelectric projects and other projects which it operates and maintains in the Pacific Northwest Region. The Parties agree to coordinate the development of these projects from the earliest possible time. Coordination of these activities must begin sufficiently in advance to meet the financial planning, ratemaking, budget and program requirements of each Party. At the beginning of each BPA rate case, this coordination will include two budget years and the seven subsequent years.

No addition, replacement, or improvement item shall be included in the BPA direct-funded portion of the budgets except as agreed to by the Parties. Any item upon which there is disagreement as to its inclusion in or exclusion from the BPA direct-funded budgets, may be included by the Corps in the appropriation portion of its budget. Nothing in this MOA shall be construed to require the DA to provide any goods or services to the BPA pursuant to § 2406 of the Act, except as may be set forth in Sub-agreements.

ARTICLE III - INTERAGENCY COMMUNICATIONS

To provide for consistent and effective communication between the DA and the BPA, each party shall appoint a Principal Representative to serve as its central point of contact on matters relating to this MOA. Additional representatives may also be appointed to serve as points of contact on Sub-agreements.

ARTICLE IV - SUB-AGREEMENTS

The DA and the BPA may conclude mutually agreed upon written Sub-agreements pursuant to this MOA, respecting DA work the parties agree to accomplish under § 2406 of the Act, which shall include the following:

- a detailed scope of work;
- schedules;
- the amount of funds required and available to accomplish the scope of work;
- identification of individual project managers;
- identification of types of contracts to be used (if known);
- types and frequencies of reports;
- identification of which party is to be responsible for government-furnished equipment, contract administration, records maintenance, rights to data, software and intellectual property, and contract audits;

- procedures for amending, modifying or terminating the Sub-agreement; and
- such other particulars as are necessary to describe clearly the obligations of the parties with respect to the portion of the DA's hydroelectric project program which BPA agrees to fund under § 2406 of the Act.

Goods or services shall be provided under this MOA only after an appropriate Sub-agreement has been signed by a representative of each party authorized to execute that Sub-agreement. In the case of conflict between this MOA and a Sub-agreement, this MOA shall control.

ARTICLE V - RESPONSIBILITIES OF THE PARTIES

A. Responsibilities of the Department of the Army

The DA shall notify the BPA of any additions, improvements, or replacements that the DA deems appropriate under §2406 at any hydroelectric projects and other projects operated and maintained by the USACE within the Pacific Northwest region.

The DA shall determine if construction of generation additions, improvements, or replacements opportunities is warranted at any hydroelectric projects and other projects operated and maintained by USACE.

The DA shall plan, design and construct, at BPA expense, such additions, improvements, or replacements as the DA and the BPA may agree upon in Sub-agreements. The DA shall construct, operate, and maintain such additions, improvements, or replacements in accordance with the purpose, terms, and conditions of this MOA, consistent with project uses of the water resources development projects.

The DA shall provide detailed periodic progress, financial and other reports to the BPA as agreed to in the Sub-agreements. Financial reports shall include information on all funds received, obligated, and expended, and on forecast obligations and expenditures.

The DA shall develop draft Sub-agreements to include mutually agreed upon scopes of work. The North Pacific Division Commander is the authorized signatory for each Sub-agreement.

B. Responsibilities of the Bonneville Power Administration

The BPA shall pay all costs associated with the DA's provisions of goods or services under agreed upon Sub-agreements pursuant to this MOA and shall transfer to the DA, in the manner as specified in Article VI, the funds necessary to accomplish that Sub-agreement.

The BPA shall ensure that only authorized BPA officials sign Sub-agreements.

ARTICLE VI - FUNDING

The BPA shall pay all costs, including overhead charges, on addition, replacement or improvement work pursuant to mutually agreed upon Sub-agreements entered into under this MOA. The cost of overhead charges shall be determined in accordance with USACE policy and with General Accounting Office ("GAO") principles and standards. The Sub-agreements shall establish the scope of work to be accomplished and the funding requirements for each project agreed to thereunder.

The BPA shall obligate one-hundred percent (100%) of the annual funding requirements of each Sub-agreement upon signature of the Sub-Agreement. This obligation sets aside funds as budgetary resources for the USACE and certifies the availability of funds to the USACE, but does not transfer any of BPA's repayment responsibilities to the DA or the USACE. By means of each Sub-agreement, BPA enters into a binding agreement that obligates BPA to fund all costs associated with the Sub-agreement and guarantees the availability of funds to the USACE for work specified in the Sub-agreement, subject only to the provisions of ARTICLE XIII if the Sub-agreement is terminated pursuant to that Article.

The Sub-agreement is the authorizing document which the USACE is authorized to obligate against and fulfills the same functions as an SF 1151, Non-Expenditure Transfer Authorization. Mutually agreed upon Sub-agreements shall be forwarded to Headquarters, USACE ("HQUSACE"), ATTN: CERM-FC, Washington, DC 20314-1000. HQUSACE shall make an apportionment to the performing USACE District based on the Sub-agreement.

Cash transfers to cover USACE disbursements shall be made from the BPA Fund to the USACE. A bill submitted for payment for work accomplished pursuant to a Sub-agreement is not subject to audit or certification in advance of payment. The U.S. Treasury's On-line Payment and Collection System ("OPAC"), or a mutually agreeable alternative, will be used to accomplish the necessary cash transfer from the BPA Fund.

The BPA Fund is established pursuant to 16 U.S.C. § 838i and consists of, inter alia, all proceeds derived from the sale of bonds, notes and other evidences of indebtedness, all receipts, collections and recoveries of the BPA, and any Congressional appropriations made to the BPA. The BPA Administrator is authorized to make expenditures out of the BPA Fund for authorized purposes, such as funding work proposed pursuant to § 2406 of the Act, provided such program expenditures have been submitted to Congress in BPA's budget.

If the USACE forecasts its actual costs under a Sub-agreement to exceed the amount of funds available for obligation under that Sub-agreement, it shall promptly notify the BPA of the amount of additional funds necessary to complete the work under that Sub-agreement. The BPA shall either obligate to the amended Sub-Agreement necessary funds, or require that the scope of work be limited to that which can be paid for by the then-available funds, or direct termination of the work under that Sub-agreement.

Both parties agree to provide each other all pertinent power related financial information, including but not limited to: estimated OPAC fund transfers and other financial transactions, accounting records, underlying assumptions, methodology, and data as needed to assist their respective efforts.

ARTICLE VII - APPLICABLE LAWS

This MOA and all documents and actions pursuant to it shall be governed by the applicable statutes, regulations, directives, and procedures of the United States. Unless otherwise required by law, all contract work with third parties undertaken by the DA shall be governed by DA policies and procedures.

ARTICLE VIII - CONTRACT CLAIMS AND DISPUTES

All claims and disputes by contractors arising under or relating to contracts awarded by the DA shall be resolved in accordance with federal law and the terms of the individual contract. The DA shall have dispute resolution authority for these claims. Any contracting officer's final decision may be appealed by the contractor pursuant to the Contract Disputes Act of 1978 (41 U.S.C. §§ 601-613). The U.S. Army Corps of Engineers Board of Contract Appeals ("ENG BCA") is designated as the appropriate board of contract appeals. In lieu of appealing to the ENG BCA, the contractor may bring an action directly to the United States Court of Federal Claims.

The DA shall be responsible for handling all contractor disputes and administrative appeals, and for coordinating with the Department of Justice if the dispute goes to Court. The DA shall notify the BPA of any such dispute and afford the BPA an opportunity to provide comments on any documents prepared regarding the dispute, including pleadings in the litigation and any resulting settlement documents. The DA shall also provide BPA an opportunity to participate in the dispute and any resulting litigation and settlement negotiations.

ARTICLE IX - DISPUTE RESOLUTION

The parties agree that, in the event of a dispute between the parties under this MOA or a Sub-agreement made pursuant to this MOA, the BPA and the DA shall use their best efforts to resolve that dispute in an informal fashion through consultation and communication, or other forms of non-binding alternative dispute resolution mutually acceptable to the parties. The parties agree that, in the event such measures fail to resolve the dispute, they shall refer administrative and policy matters to the Office of Management and Budget for resolution and matters of statutory interpretation or dispute to the Department of Justice for resolution. This provision shall not apply to the decision to enter into a Sub-agreement or the decision to amend or terminate this MOA or a Sub-agreement.

ARTICLE X - PUBLIC INFORMATION

Justification and explanation of this MOA and the Sub-agreements before Congress and other agencies, departments, and offices of the federal Executive Branch shall be the responsibility of the DA and BPA. The DA and BPA may provide any assistance necessary to support each other's justification or explanations of the programs conducted under this MOA. Each party shall be responsible for its own testimony before Congress. The DA and BPA shall coordinate public announcements, except that the DA will respond to all inquiries relating to the ordinary procurement and contract award and administration process and coordinate with BPA as appropriate. The BPA or the DA shall make its best efforts to give the other party advance notice before making any public statement regarding work contemplated, undertaken, or completed pursuant to Sub-agreements under this MOA.

ARTICLE XI - AUDIT

The DA shall maintain accounting procedures and practices sufficient to reflect properly all costs the DA has incurred in performance of work accomplished pursuant to written Sub-agreements entered into in accordance with this MOA.

Authorized BPA officials and other authorized representatives, including internal and external auditors, shall have the right to examine the records supporting the costs the DA incurs. This right of examination shall include inspection at all reasonable times at the DA's facilities used in performing work pursuant to written Sub-agreements entered into in accordance with this MOA, and at locations where records pertaining to the Sub-agreements are maintained.

ARTICLE XII - MISCELLANEOUS

A. Other Relationships or Obligations

This MOA shall not affect any pre-existing or independent relationships or obligations between the BPA and the DA.

B. Survival

The provisions of this MOA which require performance after the expiration of this MOA shall remain in force notwithstanding the expiration of this MOA.

C. Severability

If any provision of this MOA is determined to be invalid or unenforceable, the remaining provisions shall remain in force and unaffected to the fullest extent permitted by law and regulation.

ARTICLE XIII - AMENDMENT, TERMINATION, AND MODIFICATION


This MOA and related Sub-agreements may be modified or amended only by written, mutual agreement of the parties. Either party may terminate this MOA or Sub-agreements by providing written notice to the other party. The termination shall be effective upon the sixtieth calendar day following notice, unless a later date is set forth. In the event of termination, the BPA shall continue to be responsible for all costs incurred by the DA under this MOA or Sub-agreements and for the costs of closing out or transferring any on-going contracts.

ARTICLE XIV - EFFECTIVE DATE

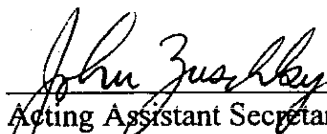
This MOA shall become effective when signed by both the BPA and the DA.

Bonneville Power Administration

Department of the Army



Administrator, Bonneville
Power Administration



Acting Assistant Secretary
of the Army (Civil Works)

DATE: 12/6/94

DATE: 12/1/94

/s/ RANDALL W. HARDY

/s/ JOHN ZIRSCHKY

Administrator, Bonneville
Power Administration

Acting Assistant Secretary
of the Army (Civil Works)

December 6, 1994

December 1, 1994